

On July 20, 2018 OWCP accepted appellant's claim for binaural sensorineural hearing loss. This was based on the May 7 and 23, 2018 second opinion reports of Dr. Paul Whitt, a Board-certified otolaryngologist, who opined that the diagnosis of binaural sensorineural hearing was due

in part to noise exposure encountered in federal employment and that she had 38 percent binaural hearing loss.<sup>1</sup>

On December 11, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a January 14, 2019 report, OWCP's district medical adviser (DMA) Dr. Stephen Maturo, an otolaryngologist, reviewed the medical record along with a March 16, 2018 statement of accepted facts (SOAF), which did not include that appellant's claim was accepted for an employment-related hearing loss or discuss exposure to hazardous workplace noise. He disagreed with Dr. Whitt's impairment rating, noting that there was no documentation to support appellant's hearing loss due to excessive noise exposure at work or a baseline hearing test of when appellant began work. The DMA also opined that appellant's documented hearing loss was not consistent with an occupational noise-induced hearing loss.

On May 6, 2019 OWCP declared a conflict in medical opinion between the DMA and Dr. Whitt, the second opinion examiner, regarding whether appellant's binaural sensorineural hearing loss was due to work exposure and whether appellant has impairment due to sensorineural hearing loss.

In an August 27, 2019 report, Dr. Gregg Govett, a Board-certified otolaryngologist selected as the impartial medical examiner (IME), diagnosed binaural sensorineural hearing loss and intermittent tinnitus, which he opined were not due to noise exposure encountered in appellant's federal employment. He explained that she did not work in an area of hazardous noise exposure and that the current audiogram was more suggestive of endolymphatic hydrops or congenital hearing loss. Copies of June 27, July 11, and August 27, 2019 audiograms were provided.

On October 23, 2019 OWCP requested that Dr. Whitt clarify his prior reports, review the DMA's January 14, 2019 report, and provide an opinion as to whether he agreed with the DMA's opinion. No response was received.

By decision dated January 9, 2020, OWCP denied appellant's claim for a schedule award. It noted that the referral to Dr. Govett for an impartial medical examination between Dr. Witt and the DMA was done in error as both physicians were OWCP providers; thus, Dr. Govett's examination was that of a second opinion examiner. OWCP found that the evidence of record did not support an impairment rating consistent with noise-induced hearing loss.

On January 21, 2020 OWCP received Dr. Whitt's addendum reports of December 17, 2019 and January 20, 2020 in which he opined that appellant's hearing loss was unlikely due to noise exposure as it was worse in the low frequencies. Dr. Whitt also agreed with the DMA that appellant's hearing loss should be zero percent.

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<sup>1</sup> Dr. Whitt also indicated that appellant's hearing loss was mostly low frequency, which was usually congenital and not related to noise. He further noted that there were no audiometric data on her hearing at the beginning of her significant noise exposure in federal employment available.

On December 7, 2020 appellant requested reconsideration. In her letter of even date, she indicated that she was exposed to loud noise from machinery on the workroom floor for 28 years, which she believed caused her hearing loss and tinnitus. Appellant submitted an April 5, 2016 report, from Dr. Tahir S. Ali, a Board-certified otolaryngologist, who diagnosed bilateral tinnitus, asymmetrical left sensorineural hearing loss, and bilateral sensorineural hearing loss.

By decision dated March 4, 2021, OWCP denied modification of its January 9, 2020 schedule award decision.

The Board finds that this case is not in posture for decision.

OWCP properly noted that it had erroneously declared a conflict in medical opinion between its DMA and an OWCP referral physician, Dr. Whitt, as neither physician was a treating physician.<sup>2</sup> Absent a true conflict in medical opinion, Dr. Govett's August 27, 2019 opinion cannot be afforded the special weight of an IME. However, even as a second opinion evaluation, Dr. Govett's finding regarding the cause of appellant's binaural hearing loss/impairment is of no probative value.

An updated SOAF was not provided to Dr. Govett, which related that appellant's claim had been accepted for binaural sensorineural hearing loss. Contrary to OWCP's acceptance of the claim, Dr. Govett opined that appellant's diagnosed binaural sensorineural hearing loss was not due to noise exposure encountered in her federal employment. An OWCP referral physician's findings, be it a second opinion or an IME, must be based on the factual underpinnings of the claim, as set forth in the SOAF.<sup>3</sup> The SOAF should be the framework of the referral physician's opinion.<sup>4</sup> As Dr. Govett's August 27, 2019 second opinion evaluation is inconsistent with OWCP's acceptance of the binaural sensorineural hearing loss claim, his opinion on causal relationship/permanent impairment is of no probative value.<sup>5</sup>

Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>6</sup> Because of the above-noted deficiencies in Dr. Govett's report, additional medical development is warranted. Accordingly, the March 4, 2021 schedule award decision shall be set aside, and the case remanded for further medical development. After such further development as OWCP deems necessary, it shall issue a *de novo* decision regarding appellant's entitlement to a schedule award.

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<sup>2</sup> See 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321(b); *S.G.*, 58 ECAB 383, 387 (2007) (a conflict may only exist between an employee's physician and a physician designated or approved by OWCP); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11a (September 2010).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.2c (September 2009).

<sup>4</sup> *Id.* at Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.3f and 3.500.4g (June 2015).

<sup>5</sup> *Id.* at Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3a (October 1990); see *R.S.* Docket No. 17-0344 (issued February 15, 2019).

<sup>6</sup> See *R.S., id.; A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Richard F. Williams*, 55 ECAB 343, 346 (2004).

**IT IS HEREBY ORDERED THAT** the March 4, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this order.

Issued: May 3, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board